



Water Law News for December 2, 2011
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WATER LAW NEWS DECEMBER 2, 2011

BNP, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Climate Change

Handbook Helps Managers Plan for Impact Of Global Warming on Water Resources

A group of federal and state agencies Dec. 1 released a publication to help water resource managers plan for the impacts of climate change....

Energy

Energy, Water Appropriations Bill Could Return to Senate Floor, Feinstein Says

Energy and water appropriations legislation (H.R. 2354) could make a return to the Senate floor "within the next week" if the number of pending amendments to the bill can be reduced, Sen. Dianne Feinstein (D-Calif.) told reporters...

Invasive Species

Michigan Governor Vetoes Measure To Bar Standards Stricter Than U.S. Rules

LANSING, Mich.—Gov. Rick Snyder (R) vetoed a bill that would have prohibited Michigan from putting in place regulations stricter than federal standards. ...

Mining

Coal Company Agrees to Settle Lawsuit By Restoring Stream, Reducing Pollution

Fola Coal Co. will pay more than \$343,000 to settle a lawsuit over pollution from a West Virginia surface coal mine and will take steps to reduce the pollution under a proposed consent degree filed in federal court (Sierra Club v. Fola Coal Co.,...

Regulatory Policy

House Approves Legislation to Ease Regulatory Burden on Small Businesses

The House approved legislation Dec. 1 that would require federal agencies to more thoroughly analyze the impacts of regulations on small businesses, a bill Republicans said would protect small companies from burdensome rules....

Regulatory Policy

House Rules Committee Spars on Merits Of REINS Act Before Passing Rule on Debate

The House Rules Committee approved on a party-line vote of 6-4 a rule Dec. 1 to govern debate on the House floor of the Regulations from the Executive In Need of Scrutiny (REINS) Act (H.R. 10), which is expected to be considered the week of Dec. 5....

Water Pollution

Asbestos Levels in Creeks Near Libby Mine Exceed Water Quality Standards, EPA Finds

MISSOULA, Mont.—Waterways near the W.R. Grace & Co. vermiculite mine in Libby, Mont., are contaminated with asbestos at levels that exceed state and federal water quality standards, leading the Environmental Protection Agency...

Water Pollution

Tool Developed to Assess Oregon Stream Flows

The Environmental Protection Agency released a tool Dec. 1 to help federal and state regulators determine whether a stream impaired by a fill or removal project will require permits. The new Streamflow Duration Assessment Method for Oregon...

Water Resources

Water Use Regulations Proposed By South Carolina Environment Department

RALEIGH, N.C.—Requirements for new permits that must be obtained by significant users of surface water in South Carolina have been proposed and will be considered at a Dec. 8 public hearing, a spokesman for the state Department of Health...



Industry Split Over EPA Plan To Develop Shale Gas Wastewater Standards

Petroleum industry groups appear sharply divided over EPA's plan to craft technology-based discharge standards for shale gas operations, with one major industry organization saying the plan could increase options for handling shale wastewater discharges while several other groups argue EPA lacks justification for issuing a national rule.

Activists' Challenge May Derail Timeline For Florida Proposed Numeric Criteria

A recently filed administrative petition from environmentalists seeking to overturn the Florida Department of Environmental Protection's (FDEP) proposed state water quality standard changes could derail a tight timetable for finalizing those standards before March and preempting controversial EPA-developed numeric nutrient criteria from being implemented.

Critics Say Regulatory Review Bills Would Mandate Least Expensive Rules

The White House, Democratic lawmakers and activist groups are ramping up their opposition to three regulatory review bills that the House is slated to consider this week, saying one of the key legislative proposals would override 25 environmental and other statutes and require agencies to issue the least costly rules possible.

Latest Blogs

GOP Bill Seeks Keystone Approval

Sen. Richard Lugar (R-IN) and other GOP lawmakers have introduced legislation that would set a 60-day deadline for State Department approval of the Keystone XL . . .



INVASIVE SPECIES: EPA proposes new ballast rules, draws threat of legal action

Paul Quinlan, E&E reporter

Published: Thursday, December 1, 2011

U.S. EPA proposed tougher rules today for cleansing ballast water in ships that introduce invasive aquatic species into U.S. lakes and shorelines.

EPA's proposal would require commercial vessels to install treatment systems to kill fish, shellfish and microorganisms in ballast water. The proposal is subject to a 75-day public comment period.

Environmentalists, whose litigation forced EPA's hand in the matter, criticized the proposal and threatened to renew litigation if EPA finalizes them. Thom Cmar, attorney for the Natural Resources Defense Council, said the proposal would not have stopped the Great Lakes' invasion by zebra and quagga mussels, two of the more than 140 invasive species established in the lakes.

"This is sort of a half-step forward by EPA," Cmar said. "They had an opportunity here to finally establish fully protective standards that would prevent new invasive species from continuing to cause devastating environmental and economic harm to the Great Lakes and other water bodies throughout the U.S. They frankly didn't do that."

The proposed standards, EPA said, are generally consistent with those set by the International Maritime Organization in 2004.

Industry groups applauded EPA's proposal as reasonable and achievable with existing treatment technology. Industry has fought aggressively to promote the international standard and decried the current patchwork of state rules -- in particular those proposed in New York and California that are 100 times and 1,000 times more stringent, respectively. Industry said there is no technology to achieve those standards.

The EPA proposal would spur development of first-generation treatment technology, said Steve Fisher, executive director of the American Great Lakes Ports Association. As technologies improve, he said, EPA can toughen the rule.

"We believe the best way to get even better technology onto ships is to get the first generation of technology going, and that's what this will get," he said. "Like any product, it will improve in time, and the second generation and third generation will be improved."

Even given the one-year head start on permitting, Fisher said it would difficult for all 70,000 ships required to have updated ballast treatment installations and retrofits -- 200 currently have treatment systems -- will stretch manufacturing capabilities and crowd shipyards where the installations can take place.

"That's a tall order," he said, urging EPA to monitor compliance and extend deadlines as necessary.

States will now have to sign off on EPA's proposal or decide whether they will add additional treatment requirements. All eyes will be on New York, the object of intense pressure from industry to drop its 100-times-stronger standard, which it argues could close off Great Lakes shipping lanes.

In an October [letter](#) to EPA Administrator Lisa Jackson, Joe Martens, head of New York State's Department of Environmental Conservation, proposed phasing in a national standard 100 times stronger than the IMO standard. New York, in return, he said, would consider abandoning its more aggressive deadlines.

Environmental groups and New York regulators reject arguments that the technology is not available. It is, they say, but the systems simply have not been built and are not yet being mass-produced.

"This is not rocket science we're talking about here," Cmar said. "It's basically swimming-pool science. No one has ever required the shipping industry to meet the most stringent and efficient standards, so it becomes a chicken-and-egg problem -- which comes first?"

EPA first proposed an invasive species rule for ballast water in 2008 in response to a lawsuit from environmental groups.

Lawmakers have fought over the issue, with Great Lakes states' Republicans calling for a workable national standard and threatening to cut EPA funds to states like New York for trying to impose more stringent rules.

NATURAL GAS: Fracking foes dominate raucous Manhattan hearing

Colin Sullivan, E&E reporter

Published: Thursday, December 1, 2011

NEW YORK -- In the first two hours of a state hearing here on hydraulic fracturing yesterday, 30 witnesses approached a microphone in a Lower Manhattan auditorium to tell state regulators what they think about the drilling practice commonly known as fracking.

Of these, just one -- an official from the Affordable Reliable Electricity Alliance -- spoke in favor of lifting New York's moratorium on drilling for shale gas. The jeers and boos that rained down on him were so intense that the Department of Environmental Conservation moderator official was forced to stop the proceeding and scold the crowd.

"We will wait until everyone behaves," DEC General Counsel Steve Russo said.

This prompted a shout from the back of the auditorium: "You behave!"

And so it went at the hearing, the last of four staged around the state on proposed draft regulations to allow fracking operations for natural gas under the Marcellus Shale.

Some attendees at what felt like an anti-fracking pep rally were borrowed from the Occupy Wall Street movement, with many waving their fingers in the air in a sign of agreement with testimony they liked. And many were middle-aged and older activists who had time to attend an all-day hearing in the middle of the work week.

Josh Fox, director of the documentary film "Gasland," was arguably the most celebrated witness. Fox looked Russo in the eye and told him the state had moved into territory that would not be supported by a majority of New Yorkers.

"Your premise is wrong. Your premise is how do we frack New York," he said. "Your premise should be whether or not to frack New York."

He then demanded the department withdraw its draft rules and an affiliated environmental analysis that many in the environmental community see as giving short shrift to issues like processing fracking wastewater, effects on health and pollution of groundwater supplies.

"This process is a charade, a sham, and it is a false premise," he said.

Others attacked New York Gov. Andrew Cuomo (D) for initiating the rulemaking process and charged him with rushing regulations under pressure from gas interests for political reasons. They said the rules lacked sufficient details on how the state would treat and dispose of fracking wastewater, finance hundreds of new inspectors needed to police wells and protect New York City's water supply.

State Sen. Tom Duane, a Democrat representing the West Side of Manhattan, urged the DEC to "decelerate" the process and took issue with the Cuomo administration's claims that fracking would help the upstate economy. His comments were fairly typical of the day.

"You're purposely creating a division in New York state between upstate and downstate," he said. "This is hasty."

'Stuff of nightmares'

Richard Gottfried (D), a New York assemblyman and chairman of the Health Committee since 1987, said New York was headed toward creating another Love Canal, in reference to an infamous toxic waste dump from the 1970s. Others called for criminal penalties as part of the rules. And several said they were concerned about water tunnels that pass through upstate on their way to supplying New York City.

The 1,000-foot buffer proposed to protect those tunnels is not enough, said Jim Gennaro, a geologist and member of the N.Y. City Council.

"I'm very concerned for what this means for New York's water tunnels," said Gennaro, citing local fault lines and apparent evidence of an increase in earthquakes in proximity to fracking operations in Oklahoma and Blackpool, England.

Paul Rush, of New York City's Department of Environmental Protection, picked up that thread after he thanked the DEC for banning fracking within the city and in some watersheds upstate. He noted that water infrastructure is often "deep underground" and could easily be damaged by small quakes or horizontal wells that can extend for thousands of feet beyond the proposed 1,000-foot buffer zone.

New York Assemblywoman Linda Rosenthal (D), from the city's Upper West Side, took the push-back a bit further, saying natural gas companies have promised "big payouts for landowners" even as evidence of local contamination has emerged in places like Dimock in northeastern Pennsylvania.

In Dimock, an energy company, Cabot Oil & Gas Corp., was forced to deliver water to residents after methane tainted local supplies. Regulators concluded the company drilled faulty wells, though the company denies the charge (*E&ENews PM*, Oct. 19).

Pennsylvania's Department of Environmental Protection now says Cabot can stop the water deliveries (*see related story*).

"All of this sounds like the stuff of nightmares," Rosenthal said. "This is a bad idea whose time has not come."

The vocal nature of the event was galvanized by recent successes in the environmental community. Activists have claimed a hand in delaying a White House decision on the Keystone XL pipeline, which would bring crude from Canada's oil sands region to the Gulf Coast, and postponing a Delaware River Basin Committee vote on fracking. Their next target has emerged in the New York attempt to allow shale gas development.

Jessica Roff, of the Brooklyn Food Coalition and Food & Water Watch, said New Yorkers "don't want another Dimock" and will continue to press their lawmakers to support the current moratorium.

Roff added that the anti-fracking movement numbers in the thousands and continues to gain momentum.

"It is a growing movement," she said, "and we will win."

DEC expands comment period

As the hearing proceeded in Manhattan, regulators in Albany were making a decision under pressure to extend the deadline for public comments on the fracking rules by a month.

The department, without comment, tacked on another month to the process, giving interested parties until Jan. 11 to have their say.

Environmentalists saw the extension as a victory in much the same vein as the Keystone XL pipeline and Delaware Basin postponements. Bruce Ferguson, of the group Catskill Citizens for Safe Energy, noted that DEC Commissioner Martens recently said drilling permits in 2012 are now unlikely, and completion of the final regulations continues to slide backward.

"This is our third big win in a month," Ferguson said in an email blast to supporters, adding that the delay, in his view, stems from "evidence that even the highest levels of government are beginning to wake up to the unprecedented risks posed by high-volume fracking."

Industry officials, for their part, said the tenor of yesterday's hearing was expected given the venue in left-leaning Manhattan.

Cathy Kenny, associate director of the New York State Petroleum Council, said she attended the other three hearings, all held upstate, and felt those events were more reflective of a "50-50" split on the issue and were attended by people directly affected by drilling.

"It was really a circus, and [many people] wanted no part of it," she said of the Manhattan hearing.

As for the monthlong delay, Kenny noted that environmental groups had requested 180 days. Her group, which is an arm of the American Petroleum Council, is "not looking at winnings or losses or how many people attend a hearing," she said.

Kenny also argued that much of the feedback at yesterday's hearing had more to do with "theatrics" than a reasoned discussion of the environmental impact analysis prepared by the state. On the question of a 1,000-foot buffer, she said that sort of room is unnecessary.

"We can drill without incident 2 feet from an aquifer," she said. "The 1,000-foot buffer from our view is unreasonable and going even further is more unreasonable."

[Click here](#) to see a Web page on New York's proposed fracking rules.

WATER POLLUTION: Coal company settles lawsuit over W.Va. mine runoff

Manuel Quinones, E&E reporter

Published: Thursday, December 1, 2011

A Consol Energy Inc. subsidiary will pay \$225,000 to settle a lawsuit over polluted runoff at a West Virginia strip mine under an agreement filed yesterday in U.S. District Court in Charleston.

The settlement puts Fola Coal Co. on the hook for \$225,000 -- \$200,000 of which will go to the West Virginia Land Trust and \$25,000 to the federal government. If it fails to control pollution, the company must pay \$500,000 to the trust. The company admitted no wrongdoing as part of the agreement.

The Sierra Club and the West Virginia Highlands Conservancy filed the lawsuit last year after U.S. EPA found excessive levels of conductivity on Boardtree Branch, a waterway near a Fola strip mine. While conductivity is not a pollutant, environmentalists consider it a barometer of stream health, a measure controversial with industry and state regulators (*Greenwire* , Nov. 23).

"This settlement marks the first time that such monitoring results have been used to establish violations of West Virginia's narrative water quality standards, which are designed to protect aquatic life," said Jim Hecker, attorney for Public Justice, which worked on the case with attorneys for the Appalachian Mountain Advocates.

The agreement, which is still pending federal review and court approval, requires independent monitoring and the company to restore 3,000 feet of Boardtree Branch and build wetlands to filter impurities.

"The mining companies are now on notice," Cindy Rank of the West Virginia Highlands Conservancy said in a statement. "This is just

the tip of the iceberg, and we will keep pressing until the mines clean up their messes and all of our streams meet the water quality standards."

Earlier this year, Consol agreed to pay \$6 million in fines for alleged water pollution violations at six West Virginia mines (*E&ENews PM* , March 14).

NATURAL GAS:

Driller to stop supplying water to Pa. residents

Published: Thursday, December 1, 2011

A natural gas driller accused of polluting water supplies in a now-famous northeastern Pennsylvania village will end water delivery to residents after three years.

Cabot Oil & Gas Corp. will end delivery of bulk and bottled water to 11 families in Dimock since the water is now safe to drink. The state's Department of Environmental Protection permitted Cabot to stop the deliveries, the firm said.

Environmental groups said the residents' water supply was of poor quality and quantity, and Cabot should continue deliveries.

The DEP required Cabot in 2010 to treat residents' water for methane, along with payments of twice the assessed tax value of their homes. But the agency did not require Cabot to accept responsibility for any chemicals other than methane in the water.

Residents are not happy with the agreement and prefer a now-scuttled plan that required Cabot to connect Dimock to the municipal water line, which would cost the company \$12 million.

Cabot's drilling had released methane into aquifers in Dimock, polluting 18 residential water wells (Michael Rubinkam, *AP/San Francisco Chronicle* , Nov. 30). -- **GV**

WATER POLLUTION:

EPA identifies source of Colo. spill

Published: Thursday, December 1, 2011

U.S. EPA cleanup crews have fingered a Colorado Suncor Energy Inc. refinery as the source of black goo that has leaked into Sand Creek and the South Platte River.

The federal agency arrived on the scene Sunday after a local fisherman reported a slow spill response from state officials (*Greenwire* , Nov. 30).

"The material appears to be coming from Suncor property, migrating under the Metro Wastewater property and daylighting in Sand Creek," said Curtis Kimbel, an EPA emergency-response manager.

John Gallagher, vice president of refining for Suncor, disputed findings that a broken pipe at the refinery might be the source of the leak.

"We are looking to find the source of the material. We're still looking to know specifically what it is. We don't have any information to link anything to anything at this point," Gallagher said. "We are anxious to find out the source of this material. That will be our job once we get off the river. It could go on for a week or so."

It is unclear how long the material has been seeping into the water, but documents show Colorado Department of Public Health and Environment officials have known since at least Oct. 26 about hazardous materials escaping the refinery.

Lab tests of samples of the contaminant taken Monday and Tuesday are not yet complete, and no public health warnings have been issued, although at least one city has stopped drawing water from the South Platte.

Cleanup crews hope absorbent booms will hold back the oily liquid from escaping the creek during a predicted storm today.

Round-the-clock work "has significantly reduced the amount of material that has gone into the river," Kimbel said. "We have not seen dead fish or birds."

Colorado officials said yesterday they were considering legal action and preparing a written order that they expect to deliver to Suncor today, said Warren Smith, spokesman for the Hazardous Materials and Waste Management Division (Bruce Finley, *Denver Post* , Dec. 1). -- **PK**

LEAD:

Philadelphia proposes stricter inspection measures

Published: Thursday, December 1, 2011

In light of mounting scientific evidence that no amount of lead exposure is safe for young children, a Philadelphia City Council panel has approved a measure that would require landlords to certify older units as lead-free zones every time a new tenant arrives or every couple of years.

The practices outlined in the bill, which passed the council's health committee yesterday and will be introduced to the full council today, should cost less than \$100 per unit every two years, according to a health department estimate.

Current laws bar landlords from renting units with lead hazards, but physicians and public health advocates have testified that some proprietors ignore the rules. And complicating the problem, 95 percent of the city's houses predate the 1978 lead paint ban.

Since that time, scientific studies have shown that even small amounts of lead exposure in children can cause cognitive defects. By current standards, several thousand Philadelphia children are exposed to unsafe lead levels.

The Philadelphia plan is modeled after a 2009 Washington, D.C., law that requires landlords to pay to certify their units, but only if pregnant women or children younger than 6 plan to occupy the property. Due to cost concerns, Philadelphia landlords are likely to ask the council to also limit the proposed law to residences intended for pregnant women and children, at least initially.

Nan Feyler, chief of staff for the city Department of Public Health, said she supported the bill as is because childless tenants may later decide to have kids. She said an amendment made late yesterday to allow landlords to train their own employees to perform inspections was a "big compromise" that would reduce costs.

"All the [proposed] law is requiring is what landlords are already required to do under the housing code," said Feyler, adding that the city's intention was "to not put an additional burden on landlords than already exists" (Don Sapatkin, *Philadelphia Inquirer*, Dec. 1). --
PK

ClimateWire
TODAY'S EDITION: Friday, December 2, 2011 -- 08:02 AM [Read full edition](#)

1. FINANCE:
Auditors find World Bank skipped policy steps in approving huge South African coal plant

The World Bank failed to follow several of its own policies when it approved a \$3.75 billion loan for the South African utility Eskom to build one of the world's biggest coal plants, an independent audit obtained by *ClimateWire* found. The year-and-a-half-long investigation by the World Bank Inspection Panel criticized the bank for insufficiently taking health, water scarcity and the pressures on local services into account when supporting the 4,800-megawatt Medupi power plant in South Africa's Limpopo province. [Go to story #1](#)

TODAY'S STORIES

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Electric vehicles 'inevitable,' but a long way off in volume

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Hamburg becomes the petri dish for Germany's clean energy culture

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An Arctic that's warmer, greener and with less ice becomes the 'new normal'

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China's car craze to quickly reshape global oil markets -- study

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Texas faces drought-related blackouts as power reserves shrink

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